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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,158	11/16/2001	Kenneth B. Higgins	5113D	1180

7590 11/02/2006

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/993,158

Applicant(s)

HIGGINS ET AL.

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 1, 3-35,38,40-49,58-72,77-79,81-85,88-97,99,100,102-128,130,131,134-136,138,141 and 151.

Continuation of Disposition of Claims: Claims rejected are 1, 3-35,38,40-49,58-72,77-79,81-85,88-97,99,100,102-128,130,131,134-136,138,141 and 151.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Response to Amendment

2. Applicant's amendment filed August 21, 2006, has been entered. Claims 1, 4, 7, 8, 17, 20, 25, 41, 88, 123, 130, 134, 136, 138, and 141 have been amended as requested. Claims 2, 36, 37, 39, 50-57, 73-76, 80, 86, 87, 98, 101, 129, 132, 133, 137, 139, 140, and 142-150. The pending claims are 1, 3-35, 38, 40-49, 58-72, 77-79, 81-85, 88-97, 99, 100, 102-128, 130, 131, 134-136, 138, 141, and 151.

3. Said amendment is sufficient to overcome the 112, 2nd rejection set forth in sections 1 and 4 of the last Office Action.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 1771

5. Claims 1, 3, 4, 7-17, 19-25, 27-35, 40-42, 44-48, and 151 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,522,857 issued to Higgins in view of US 5,610,207 issued to DeSimone as based upon the rejection set forth in section 8 of the last Office Action.

Applicant has correctly noted that the previously cited Fung reference is not available as prior art based upon its 2002 publication date (Amendment, paragraph spanning pages 18-19). However, applicant states, "Applicants do not traverse that flame lamination has been used for other textile applications other than carpet tile in the past." As such, the rejection is now based upon Official Notice, which applicant has conceded to already, rather than the cited Fung reference.

Applicant has amended claim 1 to include the limitation of claim 2. However, since claim 2 was also rejected by the cited Higgins, DeSimone, and Fung references in section 8 of the last Office Action, said amendment is insufficient to overcome the standing rejection. Additionally, applicant has also amendment claim 1 to limit the rebond foam cushion to being sandwiched by the layer of reinforcing material and the backing material. Since the claims were already interpreted this way, the amendment is insufficient to overcome the rejection. Furthermore, applicant has amended the rebond foam cushion to being a preformed sheet of rebond. However, said amendment is also insufficient to overcome the rejection since the limitation of "preformed" is a method limitation in an article claim. As such, said limitation is not given patentable weight at this time. In order to be given patentable weight, a method limitation must materially effect the final product in a structural manner. The presence of process limitations on product claims in which the product does not otherwise patentably

distinguish over the prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656. Therefore, the above rejection stands.

Independent claim 41 has also been amended to limit the sandwich structure and the preformed rebond sheet. However, as discussed above, said amendments are insufficient to overcome the standing rejection.

6. Claims 5, 18, and 43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Higgins and DeSimone references as applied to claims 1 and 41 above and in further view of EP 048 986 issued to Dow for the reasons of record.

Said claims have not been amended. As such, the rejection stands.

7. Claims 6, 26, 38, 49, 58-60, 62-67, 69-72, 77-79, and 81-85 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins and DeSimone, and in further view of US 5,540,968 issued to Higgins for the reasons of record.

The cited claims, including independent claim 58, have not been amended. As such, the rejection stands.

8. Claims 61 and 68 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins '857, DeSimone, and Higgins '968, as applied to claim 58 above and in further view of US 5,616,200 issued to Hamilton for the reasons of record.

Said claims have not been amended. As such, the rejection stands.

9. Claims 88-97, 99, 100, 102-128, 130, 131, 134-136, 138, and 141 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,522,857 issued to Higgins in view of US 5,610,207 issued to DeSimone.

Said claims were previously rejected over Higgins and DeSimone alone (section 7 of the last Office Action). However, due to the amendments to the independent claims limiting the flame laminated backing composite to include at least one layer of reinforcing material and a backing material joined to a layer of preformed rebond foam, said claims are now rejected over Higgins and DeSimone in further view of the cited Official Notice regarding flame lamination. Reasons for said rejection are analogous to those presented previously for at least claim 1.

Response to Arguments

10. Applicant's arguments filed with the amendment of August 21, 2006, have been fully considered but they are not persuasive.

11. Applicant traverses the above rejections by first arguing that the Fung reference is not available as prior art (Amendment, paragraph spanning pages 18-19). However, as discussed above the claims are now rejected in view of the cited Official Notice, which is conceded by applicant, instead of the Fung reference.

12. Applicant asserts there is not proper motivation to employ said flame lamination in a carpet tile (Amendment, paragraph spanning pages 18-19). However, as agreed to by applicant, flame lamination is a well known method of bonding foam and fabric layers. The intended use of said foam and fabric layers as a carpet tile is not necessarily relevant to the method of bonding known fabric and foam layers.

13. Applicant also traverses the rejections by asserting that DeSimone fails to disclose flame lamination of a preformed sheet of rebond foam (Amendment, page 19, 2nd paragraph). In response, it is asserted that the rejection is not based upon DeSimone alone. While DeSimone

Art Unit: 1771

teaches formation of rebond foam in-situ, this “in-situ” can be interpreted as the making of the preformed sheet of rebond, which is subsequently flame laminated as is known in the art.


14. Applicant repeats arguments presented previously with respect to the teachings of DeSimone, changes to a dimensionally stable carpet tile, removing of one of two stabilizing layers, the accepted wisdom in the art, the preponderance of evidence that outweighs the conclusion of obviousness, and the Norton declaration (Amendment, paragraph spanning pages 19-20 – page 23, 4th paragraph). In response, applicant’s attention is directed to sections 13-19 of the last Office Action.

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cj
October 30, 2006


CHERYL A. JUSKA
PRIMARY EXAMINER